IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

J U D G M E N T

Fateh Singh Vs.Chandra Shekar & Ors.
S.B. CIVIL FIRST APPEAL NO.295/2006

Against judgment and decree dated 13.02.2006 passed by Addl. District Judge (Fast Track) No.3, Jodhpur in Civil Original Suit No. 475/2004 – Chandra Shekar Vs. Hari Singh

DATE OF JUDGMENT: 26th May, 2006.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. O.P. Boob for appellant.
Mr. Om Mehta for respondents.

BY THE COURT:

This first appeal under Sec.96 CPC challenges the judgment & decree dated 13.02.2006 passed by learned Addl. District Judge (Fast Track) No.3, Jodhpur in Civil Original Suit No.475/04 (Chandra Sekhar Bohra Vs. Hari Singh, whereby the suit filed by plaintiff-respondent No.1 has been decreed against defendant-appellant and the trial Court has passed the decree of eviction against the

defendant directing him to vacate and handover the disputed premises to the plaintiff-respondent No.1. The learned Court has also directed the defendant to pay due rent Rs.2,700/- to the plaintiff and has fixed the standard rent @ Rs.1,000/- per month from the date of filing of the suit and also held the plaintiff entitled to receive damages for use and occupation from defendant @ Rs.1,000/- from September 2002 till handing over of vacant possession.

It is worth stating here that the appellant-defendant, who has filed the present appeal, before filing of this appeal on 08.05.2006, approached the Rent Tribunal, Jodhpur and filed an application under Sec.18 of the Rajasthan Rent Control Act, 2001 for interim injunction against non-applicant plaintiff-respondent No.1 Chandra Shekar with the averments that his father Bhanwar Singh had taken the premises of the ownership of non-applicant on rent in the year 1972 and a rent deed in respect of the tenancy was executed in between them on which the entry with regard to the

rent paid from time to time was made. It was stated that his father Bhanwar Singh died on 11.01.1997 in the said tenanted premises and he being his son was in use and occupation of it. It was further stated that his father Late Bhanwar Singh in his bank account got entered the address of the premises and their ration card also mentioned this address. He stated that he has paid rent for the period uptil 2005, however, non-applicant Chandra Shekhar, who is an influential person, on 06.04.2006 threatened him to vacate the premises, so non-applicant Chandra Shekar be restrained from evicting him without taking legal recourse. The non-applicant Chandra Shekar replying the application stated that the applicant's father had vacated the house in question and handed over the possession to his uncle Hari Singh against whom a decree has been passed by the Addl. District Judge (Fast Track), Jodhpur on 13.02.2006 and the applicant wrongly showing himself to be the tenant of the premises has filed the application on wrong and baseless facts so the application be rejected. The Tribunal rejected the application on 24.04.2006

referring to the conclusions arrived at by the trial Court on the issues framed in the suit. The appeal filed by Fateh Chand in respect of rejection of his application came to be decided by the Appellate Rent Tribunal on 25.05.2006 citing the principle propounded by the Apex Court that in cases where decree has been passed and proceedings in respect of possession are pending, the objections in respect of any hindrance in possession can be decided only by the court passing the decree. The Appellate Tribunal was of the view that filing of separate suit in the circumstances is barred by Order 21 Rule 101 CPC and came to the conclusion that on merit also the appellant (Fateh Singh) has failed to produce any rent receipt for the rent paid by him after 1986 and the Death Certificate of Bhanwar Singh issued in 1997 bears the address of Bhanwar Singh as R.S.E.B. Colony, Shastri Nagar, which shows that the appellant had got prepared a forged Death Certificate and got entered the residential address of Bhanwar Singh as Rampole ki Bari and hence dismissed the appeal filed by the appellant.

Appellant Fateh Singh, in the present appeal, has come with the case that respondent No.1 Chandra Shekar had filed the suit for eviction and fixing of standard rent against respondent No.2 Hari Singh (uncle of appellant) and sent a notice showing Hari Singh as the tenant of Chandra Shekar, which was denied by Hari Singh and he refused any relationship in between them of landlord and tenant and that suit was decreed against Hari Singh. It has been alleged that father of appellant Late Bhanwar Singh was also a tenant in the premises in respect of which the decree was obtained by respondent No.1 Chandra Shekar and the respondent also accepted his tenancy @ Rs.23/- per month from 27.12.1976 and in respect of which one rent note was also written in between his father and respondent No.1 and as such the tenancy was clearly established, however, he was not impleaded in the suit. The respondent No.2 denied his tenancy or the ownership of respondent No.1 in reply and stated himself to be the owner of the house in question, however, ultimately decree was passed in favour of respondent No.1 on 13.02.2006. It is also his case

that though on the basis of reply of respondent No.2 to the notice the Court had framed a issue but resultantly the rights of the appellant have been marred as the said issue was decided in his absence without hearing him. It has been emphasized that the possession of the rented premises was never handed over to the respondent No.1 and the respondent No.1 is clearly wrong in his statement that after taking possession of the tenanted premises on 1.11.1986 from appellant it was rented to respondent No.2 on the very same day. The appellant, who was not a party to the suit before the learned court below, has prayed for quashing and setting aside the decree dated 13.02.2006. He alongwith the appeal has filed an application for permission to file the appeal.

The landlord, respondent No.1 Chandra Shekar, in whose favour the decree impugned has been passed by the learned Addl. District Judge (Fast Track) No.3, Jodhpur in Civil Original Suit No. 475/2004, has filed reply to the interim relief prayed by the appellant in the present appeal

inter-alia raising objection with regard to the maintainability of the present appeal. The respondent No.1 has referred to the proceedings which took place before the Rent Tribunal and Appellate Rent Tribunal by the appellant and it is stated by respondent No.1 that the appellant in order to create hurdles in the execution of the decree passed by the court below has filed the present appeal, which is liable to be dismissed and the appellant is not entitled to get any relief from this Court. He has supported this by mentioning that the disputed premises was in the tenancy of respondent No.2 against whom the suit was filed for eviction, however respondent No.2 took the stand that he was the owner of the premises in question though had executed the rent note in favour of respondent No.1 but as he was claiming himself to be the owner of the property but as some part of southern portion of the premises was earlier in the tenancy of his brother Bhawar Singh under the rent note dated 27.12.1976 which was vacated and given by respondent No.1 thereafter on rent to respondent No.2, and the

said rent note was produced in the Court, the Court after coming to the conclusion that respondent Hari Singh was in the tenancy of the respondent No.1, passed the judgment and decree impugned. According to respondent No.1 the appellant, who has no title over the property in question, in connivance with respondent No.2 filed the application before the Rent Tribunal and in order to show his occupancy in the disputed premises filed the death certificate of Bhanwar Singh showing his death on 10.04.2006 whereas Bhanwar Singh, who was serving in the Commercial Taxes Department had died on 11.01.1997 and his death was got registered 29.01.1997 for the purposes of pension etc. showing his address as RSEB, Shastri Nagar. The respondent No.1 also brought to the notice of the Court that the voter list of the area in which disputed property is situated was filed before the Rent Tribunal as Ex.1, does not find mention of the name of appellant and the report of the Commissioner, appointed during the pendency of the suit, in respect of the premises showed Hari Singh to be in

possession of the premises and not the appellant but the appellant by fabricating and forging the documents filed an application under Section 18 of the Rent Act before Rent Tribunal for injunction and on his failure to get any relief, challenged the order passed on the application in appeal before Appellate Rent Tribunal, which was also dismissed.

The appeal was heard at length at the request of main contesting parties though it is still at the stage of admission and with the consent and acquiescence of the parties same is being disposed off by this judgment.

It has been contended by learned counsel for the appellant that since father of the appellant was tenant and after his death he came into occupation of the rented premises, therefore, without filing a suit for eviction against him the learned trial court has wrongly decreed the suit. It has also been contended that infact there were two rent notes executed by the plaintiff-

respondent; one was in favour of plaintiff's father Bhanwar Singh and the other was in favour of Hari Singh, who is uncle of the appellant, therefore, without impleading the appellant as party in the suit filed for eviction in relation to the portion occupied by the appellant, the impugned decree passed by the trial court is against law and same deserves to be set aside.

On the other hand, it has been contended that initially the rented premises was given to Shri Bhanwar Singh, the father of appellant and to Shri Hari Singh by respondent plaintiff in the present case but in the year 1986 father of the appellant vacated the premises and the portion vacated by him was given on rent to Hari Singh and in the above circumstances it was not necessary to array the appellant as defendant in the suit. It has next been contended that the appellant has filed an injunction application before the Rent Tribunal stating himself to be a tenant of the plaintiff-respondent but the Rent Tribunal has dismissed the injunction application finding that

the death certificate produced by the appellant was a fake certificate showing wrong address of his father, and also finding that the appellant was having no case whatsoever. According to learned counsel, the Tribunal has discussed the genuineness of the death certificate and has drawn a conclusion that respondent Hari Singh was in the tenancy. It has further been contended that the order passed by the Tribunal was challenged before the Rent Appellate Tribunal in an appeal and that appeal has been dismissed, as such the appellant has no locus whatsoever to prefer this appeal against the judgment and decree passed by the learned trial court against respondent Hari Singh who was defendant in the suit.

I have considered the submissions made before me.

It is to be seen that the plaintiff-respondent filed the suit against respondent Hari Singh for eviction in relation to the disputed premises, who is respondent No.2 in this appeal,

denied even the ownership of the rented premises of the plaintiff. The learned trial court after framing of necessary issues decreed the suit for eviction vide its judgment and decree and held that the disputed premises was on rent with respondent NO.2 only and that in the year 1986 the father of the appellant vacated the premises and the same was given on rent to respondent Hari Singh. Hari Singh is uncle of the appellant. Initially father of the appellant and Hari Singh respondent both took separate portions on rent from the plaintiff but subsequently the portion occupied by Shri Bhanwar Singh was vacated. After passing of the judgment and decree, the appellant filed an application under Section 18 of the Rent Control Act seeking injunction in relation to the rented property which is in possession of respondent No.2 Hari Singh before the Rent Tribunal and the Rent Tribunal after considering the entire matter reached to the conclusion that the appellant was not entitled for any injunction whatsoever and the Rent Tribunal also came to the conclusion that a fabulous case was filed by him. Learned Rent

Tribunal also came to the conclusion that fabricated death certificate was got prepared and was filed just to prove that Bhanwar singh was tenant of the plaintiff on the basis of address mentioned on it. The learned tribunal doubted the genuineness of the death certificate and dismissed the application moved under Section 18 of the Act.

The appeal preferred before the Rent Appellate Tribunal against the order passed by the Rent Tribunal was also dismissed. It is sufficient here to mention that in the suit filed for eviction against respondent No.2 Hari Singh, notice was given by the plaintiff to the respondent in relation to the suit premises occupied by him and to vacate the suit premises. The plaintiff-respondent's case was that Hari Singh was the tenant in suit premises. It was also the case of the plaintiff that Bhanwar Singh father of the appellant had vacated the premises subsequently and then same was given on rent to Hari Sigh. Hari Singh has nowhere stated that the suit property was ever on rent with the father of the appellant. The

case of respondent No.2 was that he was the owner of rented premises, thus, what emerges out from the facts of the present case is that the appellant is claiming himself to be one of the tenant and living in the same house in another portion of which his uncle Hari Singh is living. If that is so, then, it cannot be believed that he was not aware of the suit for eviction filed against his uncle in relation to the suit premises. No application whatsoever was filed by Hari Singh for becoming a party in the suit. The learned trial Court after framing necessary issues reached to the conclusion that respondent Hari Singh was the only tenant in the suit premises.

It is further to be seen that the appellant, who has challenged the impugned judgment and decree dated 13.02.2006, was not a party to the proceedings in the suit, therefore, it is a case where prima facie appellant is not entitled to challenge the same in appeal unless he is granted permission in that regard. Although there is an application on the file seeking

permission for the purpose but the same cannot be allowed in the facts and circumstances as have been discussed hereinabove that the appellant has no locus whatsoever in relation to the suit premises after vacation of the suit premises by his father long back and before the Rent Appellate Tribunal this has been established that the appellant's father, who was tenant in the premises, had subsequently vacated the premises and this finding was also arrived at in the impugned judgment and decree dated 13.02.2006 passed by the learned trial Judge while deciding issues No.2 and 3, which were in relation to handing over of possession by the father of the appellant to the plaintiff and thereafter same being given on rent to the uncle of appellant Shri Hari Singh.

After carefully considering the entire matter, I am of the opinion that the appellant-plaintiff has not come with clean hands. The Rent Tribunal and Rent Appellate Tribunal both have discussed the matter in relation to fabricated documents submitted by the appellant for obtaining

injunction. In the present case, this has been clearly established that father of the appellant had vacated the premises long back and the portion occupied by the father of the appellant was rented to respondent Hari Singh by the plaintiff.

In the above circumstances, I do not find any substance in this appeal and the argument of the learned counsel for appellant that in absence of the appellant before the trial court as he was not made party, the decree passed by learned trial court requires to be set aside is not tenable for the simple reason that suit for eviction is required to be filed against a tenant only and when neither the appellant nor his father was tenant at the time of filing of the suit by plaintiff, for eviction of the rented premises therefore the suit filed by the plaintiff not arraying the appellant as a party in the eviction suit was proper and the decree so passed by learned trial court in the above circumstances is not required to be set aside on being challenged by the appellant by way of filing the present appeal.

In view of forgoing discussion, I am of the opinion that the present appeal requires to be dismissed as not maintainable. On merit also, the appellant has no case whatsoever which may require interference by this Court in the impugned judgment and decree dated 13.02.2006 passed by the trial court rather he is liable to be saddled with exemplary costs for creating false evidence and approaching the courts of law with unclean hands.

Resultantly, the appeal is dismissed with costs throughout.

(SATYA PRAKASH PATHAK)J.

/jpa